

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK- - - - -  
MARK NUNEZ, et al.,

Plaintiffs,

- against -

CITY OF NEW YORK, et al.,

Defendants.  
- - - - -

JAMES C. FRANCIS IV

UNITED STATES MAGISTRATE JUDGE

: 11 Civ. 5845 (LTS) (JCF)

: MEMORANDUM

: AND ORDER

USDS SDNY

DOCUMENT

ELECTRONICALLY FILED

11/5/13

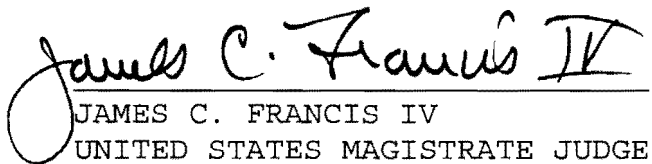
On February 28, 2013, I issued a Memorandum and Order adjudicating disputes concerning the means by which class notice would be distributed to members of the plaintiff class. Both parties now seek modifications to the Class Notice order. The plaintiffs, alleging that the defendants have violated the order by failing to post the notice "where it is reasonably calculated to be seen by inmates in the area," request (1) that the Class Notice be laminated, (2) that it be posted inside the intake/receiving area pens instead of outside (3) that it be posted inside the housing areas near the telephones rather than outside between the entrance gates, and (4) that copies be distributed to inmates in the Mental Health Assessment Unit for Infracted Inmates and Restricted Housing Units. (Letter of Vasudha Talla dated Oct. 25, 2013, at 1-2, 4-5). For their part, the defendants argue that the posting requirements have proven burdensome and that it will be more effective to

distribute the Class Notice individually to each newly admitted inmate and to post copies in the law library at each facility. (Letter of Arthur G. Larkin dated Oct. 30, 2013, at 3-5).

Both applications are denied. For the most part, the parties are seeking to litigate aspects of the notice process that they had previously agreed to. If the plaintiffs seek to amend the Class Notice order, they must support their position with proof of the defendants' non-compliance by way of affidavit or, potentially, live testimony. For their part, the defendants now propose a means of notice -- individual distribution -- that they had previously opposed as unnecessary and burdensome. They, too, must make a record if they wish to substitute new means of notice for their obligations under the existing order.

Accordingly, the respective applications of the plaintiffs and the defendants to modify the procedures for providing notice to class members are denied without prejudice to renewal at such time as any party is prepared to proffer evidence.

SO ORDERED.

  
JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York  
November 5, 2013

Copies mailed this date:

Jonathan S. Abady, Esq.  
Katherine R. Rosenfeld, Esq.  
Vasudha Talla, Esq.  
Emery Celli Brinckerhoff & Abady, LLP  
75 Rockefeller Plaza  
20th Floor  
New York, NY 10019

Jonathan S. Chasen, Esq.  
Legal Aid Society  
199 Water Street, 3rd Floor  
New York, NY 10038

Mary Lynne Werlwas, Esq.  
The Legal Aid Society  
111 Livingston Street  
Brooklyn, NY 11201

William I. Sussman, Esq.  
Joseph G. Cleemann, Esq.  
Christopher Paul Conniff, Esq.  
Amanda N. Raad, Esq.  
Ropes & Gray LLP  
1211 Avenue of the Americas  
New York, NY 10036-8704

Arthur G. Larkin, Esq.  
Diep Nguyen, Esq.  
Corporation Counsel for the City of New York  
100 Church Street  
New York, NY 10007